

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
CLARKSBURG

DARUS ZEHRBACH,

Petitioner,

v.

Civ. Action No. 1:20-CV-266
Crim. Action No. 1:18-CR-60
(Kleeh)

UNITED STATES OF AMERICA,

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION [ECF NO. 79]

On December 7, 2020, the pro se Petitioner, Darus Zehrbach ("Petitioner"), filed *Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody* (the "Motion"). [ECF No. 66].¹

I. REPORT AND RECOMMENDATION

Pursuant to 28 U.S.C. § 636 and the local rules, the Court referred the action to United States Magistrate Judge Michael J. Aloï for initial review. On June 2, 2022, the Magistrate Judge filed a Report and Recommendation ("R&R") [ECF No. 79], recommending that the Court deny the Motion and dismiss the case without prejudice. Id.

The R&R also informed the parties regarding their right to

¹ Unless otherwise noted, all docket numbers refer to Criminal Action No. 1:18CR60.

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file specific written objections to the magistrate judge's report and recommendation. Under Local Rule 12 of the Local Rules of Prisoner Litigation Procedure of the Northern District of West Virginia, "[a]ny party may object to a magistrate judge's recommended disposition by filing and serving written objections within fourteen (14) calendar days after being served with a copy of the magistrate judge's recommended disposition." LR PL P 12. Therefore, parties had fourteen (14) calendar days from the date of service of the R&R to file "specific written objections, identifying the portions of the Report and Recommendation to which objection is made, and the basis of such objection." The R&R further warned them that the "[f]ailure to file written objections . . . shall constitute a waiver of de novo review by the District Court and a waiver of appellate review by the Circuit Court of Appeals." The docket reflects that Petitioner accepted service of the R&R on June 7, 2022. [ECF No. 80]. Petitioner filed no objections.

When reviewing a magistrate judge's R&R, the Court must review de novo only the portions to which an objection has been timely made. 28 U.S.C. § 636(b)(1)(C). Otherwise, "the Court may adopt, without explanation, any of the magistrate judge's recommendations" to which there are no objections. Dellarcirprete v. Gutierrez, 479 F. Supp. 2d 600, 603-04 (N.D.W. Va. 2007) (citing

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Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983)). Courts will uphold portions of a recommendation to which no objection has been made unless they are clearly erroneous. See Diamond v. Colonial Life & Accident Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005).

II. DECISION

After receiving no objections, the Court reviewed the R&R for clear error. Upon careful review, and finding no clear error, the Court **ADOPTS** the R&R [ECF No. 79]. The *Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody* is **DENIED and DISMISSED WITHOUT PREJUDICE** for lack of jurisdiction [ECF No. 66]. Respondent's Motion to Dismiss [ECF No. 71] is **DENIED AS MOOT** and the Petitioner's Amendment to Motion to Allow Defendant to Engage in Employment, Motion for Sanctions, Motion for Partial Summary Judgment, Motion to Set a Hearing Date, and addendum to the Motion for Sanctions [ECF Nos. 52, 75, 76, 77, & 78] are also **DENIED AS MOOT**.

It is so **ORDERED**.


The Clerk is directed to transmit copies of this Order to counsel of record via electronic means and to the pro se Petitioner via certified mail, return receipt requested.

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DATED: July 15, 2022

Handwritten signature of Thomas S. Klee in black ink.

THOMAS S. KLEE, CHIEF JUDGE
NORTHERN DISTRICT OF WEST VIRGINIA